IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
September 17, 2009 Session

DOROTHY MORTON v. COVENANT HEALTH CORP., ET AL.

Appeal from the Chancery Court for Knox County
No. 170017-3 Michael W. Moyers, Chancellor

No. E2009-00339-COA-R3-CV - FILED OCTOBER 13, 2009

This is a retaliatory discharge lawsuit filed by Dorothy Morton ("Plaintiff") against Parkwest Medical Center and Covenant Health Corporation ("Defendants"). While employed by Defendants as a surgical tech, Plaintiff informed an unwed new mother, a patient at Parkwest Medical Center, that she was aware of a couple that might be interested in adopting the baby. The couple interested in adopting the baby were the son and daughter-in-law of one of Plaintiff's friends. Plaintiff admitted that her conduct violated Parkwest Medical Center's policy regarding adoptions, but she insisted that she was not aware of that policy at the relevant time. Plaintiff's employment was terminated because of her actions. Plaintiff sued, arguing that her termination constituted a retaliatory discharge because it was in violation of rights given to her by statute and because it violated the clear public policy of the State of Tennessee. Both Plaintiff and Defendants filed motions for summary judgment. The Trial Court granted Defendants' motion for summary judgment. Plaintiff appeals. We agree with the Trial Court that Plaintiff's termination did not violate a Tennessee statute or a clear public policy of this State and, therefore, affirm the judgment of the Trial Court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and JOHN W. MCCLARTY, JJ., joined.

Robert L. Bowman, Knoxville, Tennessee, and Jeffrey A. Phillips, Greenville, South Carolina, for the Appellant, Dorothy Morton.

Jay W. Mader, Knoxville, Tennessee, for the Appellees, Covenant Health Corporation and Parkwest Medical Center.

OPINION

Background

Defendants terminated Plaintiff's employment in July 2006, and this retaliatory discharge lawsuit was filed in June 2007. Plaintiff claimed that her employment was improperly terminated "under the *Cain-Sloan* doctrine . . . in retaliation for asserting her rights under the Tennessee Code Ann. Section 36-1-108." More specifically, Plaintiff claimed that she was an exemplary employee until she was illegally terminated for helping to facilitate the adoption of the child of an unwed mother who gave birth at the hospital where Plaintiff was employed. Plaintiff claims her facilitation of the adoption was protected by Tenn. Code Ann. § 36-1-108(a), and was further protected by the State's public policy favoring adoption. Plaintiff sought back pay, front pay, damages for embarrassment and humiliation, and punitive damages.

Defendants answered the complaint, generally denying any liability to Plaintiff. Defendants claimed Plaintiff was terminated for violating the federal Health Insurance Portability and Accountability Act ("HIPAA"), hospital policies, and the "Tennessee Code." Defendants further asserted that Plaintiff failed to state a claim upon which relief could be granted because she did not exercise any statutory or constitutional right, and her discharge did not violate any public policy evidenced by a constitutional, statutory or regulatory provision.

Plaintiff filed a motion for partial summary judgment as to the issue of liability. Defendants also filed a motion for summary judgment. All parties filed statements of undisputed material facts in accordance with Tenn. R. Civ. P. 56.03. The material facts are undisputed and are as follows[1]:

1. Plaintiff was employed by Defendants as a surgical tech in the OB ward.

2. Teresa Steen was a former employee at Parkwest Medical Center who worked on the OB ward. Teresa Steen and Plaintiff are friends. Plaintiff knew that Teresa Steen's son and daughter-in-law were interested in adopting a baby.

3. On June 30, 2006, an unwed teenage patient was admitted to the OB ward to deliver a baby. The patient was accompanied by her mother.

4. On June 30, 2006, Plaintiff called Teresa Steen to see if Ms. Steen's son and daughter-in-law were still interested in adopting a baby because Plaintiff knew of a possible adoptable baby. Ms. Steen's daughter-in-law then joined the conversation and Plaintiff asked her the same question. The daughter-in-

[1] We have created this list of undisputed material facts from the parties' Tenn. R. Civ. P. 56.03 statements of undisputed material facts, as well as the parties' respective responses thereto. Naturally, there were some disagreements between the parties, but these disagreements are not material to the resolution of this appeal.

law responded that they still were interested in adopting a baby. When this conversation took place, Plaintiff did not have a signed release of information from the birth mother and had not even spoken to the birth mother about the possibility of adoption.

5. Although Plaintiff did not identify the birth mother, Teresa Steen assumed that the baby Plaintiff was referring to was at Parkwest Medical Center.

6. On Saturday, July 1, 2006, an adoption agency came to the hospital to visit with the birth mother. The birth mother did not like the adoption agency representative and was upset because she was told that the baby would have to start out in foster care.

7. On the evening of July 1, 2006, Plaintiff noticed that the birth mother was upset and Plaintiff asked the birth mother if she was upset about the adoption. The birth mother told Plaintiff she was not comfortable with the baby being placed in foster care.

8. Plaintiff told the birth mother that she knew a couple who might be interested in adopting the baby. Plaintiff then asked the birth mother if she wanted the contact information for the couple. When the birth mother responded in the affirmative, Plaintiff provided her with the contact information.

9. The birth mother's mother contacted the Steens. After a meeting with the Steens, the birth mother decided to allow the Steens to adopt the baby. Plaintiff asked the birth mother not to tell anyone that it was Teresa Steen's son who was going to adopt the baby because there were people at the Hospital who did not like Ms. Steen.

10. On July 5, 2006, Plaintiff was suspended pending an investigation into whether Plaintiff's actions violated HIPAA.

11. Plaintiff's employment was terminated on July 7, 2006. The reasons given to Plaintiff for her termination were that her actions violated HIPAA, Tennessee statutory provisions, as well as hospital policies.

12. Parkwest Medical Center maintains a patient confidentiality policy which provides, in pertinent part, as follows:

> It is the policy of Parkwest Medical Center to protect the privacy of each patient concerning his or her treatment. Only clinical staff and hospital medical staff caring for the patient are authorized and qualified to discuss, evaluate among themselves, in private, the condition of the patient or the effectiveness of

> treatment methods. Patient and related patient information shall not be the subject of casual conversation by anyone. Violation of patient confidentiality is grounds for dismissal of the employees involved.
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> * * *
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> Employees of [Parkwest Medical Center] often have access to intimate facts regarding the patient and his or her treatment. These facts are considered confidential and must not be discussed in idle conversation inside or outside the hospital premises.
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> * * *
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> Under no circumstances should information be given to anyone regarding patients at [Parkwest Medical Center] without obtaining a signed Release of Information from the patient or legal guardian.

13. Parkwest Medical Center provides employee training regarding the confidentiality provisions of HIPAA. Plaintiff has received HIPAA confidentiality training as well as other training pertaining to patient confidentiality.

14. Parkwest Medical Center has a policy specifically addressing adoptions. The stated purpose of the policy is to "safely and legally release and place a newborn for adoption" in accordance with the laws of Tennessee. The policy also provides, in part, as follows:

> A. Upon learning of a birth mother's intent to enter into an adoption arrangement, either prior to admission or upon admission, the Nurse will notify Social Services. If he/she is unavailable, notify the on-call social worker. The nurse and social worker will obtain all the information necessary to provide a smooth transition for the baby from the birth mother to the prospective adoptive parents. Social Services will contact the attorney/agency involved with the case.
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> B. Confidentiality regarding the patient is to be strictly honored. Only people (employees) directly involved in the care of this patient should be aware of

> the situation. Off duty employees or employees in other areas of the hospital/system should not be given any information regarding the situation. (emphasis in the original)
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> C. The nurse will document the patient's preferences on the adoptive birth plan (see attached). . . .

15. Plaintiff admitted that her actions violated Parkwest Medical Center's adoption policy, although Plaintiff denied that she was aware of the specifics of the policy during the relevant time. While Plaintiff denied being aware of the specific contents of the adoption policy, she did, nevertheless, assume that Parkwest Medical Center had some sort of a policy in effect regarding adoptions.

16. The birth mother's nurse, Jennifer Price, made the following handwritten report dated July 2, 2006:

> In report Mika stated mom had decided not to go [with] agency adoption and they were going to "give it to somebody they found." I ask who and she (nurse) said "oh somebody." During pt assessment we talked about her decision. I ask her who she found and she said she wasn't suppose to tell. I ask her why and she said the person told her not to tell because she could get in trouble. The pt pulled out a piece of paper [with] names and numbers on it that [were] given to her by the "lady." Later in the day the mom and pt were asking a lot of questions about adoption. . . . They said they were put off by the agency rep. who was here, saying she ask[ed] too many questions and telling them they should inform the baby's daddy since they knew who he was. The pt. is closed chart and doesn't want anyone but her mom to know she had a baby. I ask how it came about Dorothy [Morton] giving them the names and numbers and they said she just came in their room and said "I understand you are giving your baby up for adoption. I know someone who is looking to adopt." The pt and mother said they had had no previous conversation with Dorothy. . . . Being her nurse I felt unable to plan for her and the baby's care and discharge because the pt and mom were told to keep information secret. The social worker had been in 7/1 and talked with her

> before Catholic Charities rep was here. The social worker called 7/2 . . . and I tried to explain what was going on . . . . Social worker is going to revisit pt on 7/3 and had questions and concerns about ethical and legal issues surrounding case. I felt very uncomfortable dealing [with] all the issues because it involved people we know (Steens). . . .

In January 2009, the Trial Court issued a detailed memorandum opinion and order granting Defendants' motion for summary judgment. In reaching this conclusion, the Trial Court set forth the following material facts it found to be undisputed:

> 1. Plaintiff Dorothy Morton was a long term at-will employee of Defendant Parkwest Medical Center.
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> 2. In the course and scope of her employment, Plaintiff learned of an underage patient in the care of the Defendants who had given birth and was seeking to place her newborn child for adoption. Pursuant to hospital policies, the Defendants began the process of putting the biological mother in touch with adoption agencies.
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> 3. Plaintiff had knowledge of a couple . . . who were interested in adopting a child.
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> 4. Plaintiff contacted [a friend who was a] former nurse [at Parkwest], and through her got in touch with her friend's daughter to ascertain whether or not daughter was still interested in adopting a child. The potential adoptive mother indicated that she did continue to have such an interest, whereupon the Plaintiff asked permission to provide the name and phone number of the potential adoptive mother to the biological mother of the child.
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> 5. A short time later, while in the biological mother's hospital room, the Plaintiff informed the biological mother that she knew of a potential adoptive family for her child, and asked the biological mother if she would like the potential adoptive parents' contact information. The biological mother acquiesced, and the information was left with her. The biological mother and her parents later contacted the adoptive family, and sometime later an adoption was finalized. It is undisputed that the Plaintiff was not being compensated in any way for her activities.
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> 6. The Defendants learned of the Plaintiff's actions and conducted an investigation. At the close of the investigation, the Defendants concluded that the Plaintiff's actions violated the Health

> Insurance Portability and Accountability Act (HIPAA), Tennessee statutes and hospital policy and terminated Plaintiff.

After setting forth the undisputed material facts, the Trial Court concluded that Defendants' motion for summary judgment should be granted. In relevant part, the Trial Court stated:

> The Plaintiff brings this cause of action under a theory of retaliatory discharge, claiming that she was terminated for the exercise of a constitutional right or in violation of clear public policy under the standards set forth by the Supreme Court in Clanton v. Cain-Sloan, 677 S.W.2d 441 (Tenn. 1984). In support of her claim, the Plaintiff alleges that her actions constituted an exercise of rights granted to her pursuant to Tennessee Code Annotated § 36-1-108. The Defendants argue that this section does not create any right the exercise of which would support a retaliatory discharge claim in Tennessee, and that the termination of the Plaintiff's employment under these circumstances is not so clearly violative of Tennessee public policy as to support a cause of action for retaliatory discharge. . . . [Upon] consideration of Tennessee law regarding the employment-at-will doctrine, this Court finds itself in agreement with the Defendants. . . .
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> [T]he Court finds that the statute relied upon by the Plaintiff does not create any right which the Plaintiff did not possess in the absence of the statute, and further finds that while adoption is an important public policy of the State of Tennessee, that termination of the Plaintiff's employment under the circumstances shown . . . does not rise to the level of violation of public policy necessary to sustain a cause of action for retaliatory discharge in the [S]tate of Tennessee. . . .
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> TCA § 36-1-108 expresses the decision of the Legislature that professional adoption agencies ought to be licensed and regulated by the State. In exempting certain activities from the scope of the statute, such as those engaged in by the Plaintiff herein, the Legislature did not grant to the Plaintiff any rights which she did not already have. Were TCA § 36-1-108 to be stricken from the code books, the Plaintiff would have no greater or lesser right or privilege to act as an uncompensated agent for parties interested in adoption that she has with the statute extant. This being the case, this Court cannot conclude that the exercise of a "right" not created by TCA § 36-1-108 or by any other statute of which the Court is aware could serve as the foundation of a cause of action for retaliatory discharge.

> Similarly, while this Court previously found that adoption is an important public policy of the State of Tennessee, this Court cannot conclude that the Plaintiff's termination under the facts and circumstances shown here so clearly violates the public policy as to serve as the basis for a cause of action sounding in retaliatory discharge. The totality of the Tennessee code chapter dealing with adoptions makes clear that not only is it the public policy of the State of Tennessee that adoption be available for the benefit of otherwise unwanted children, but also that the rights of all of the parties involved be protected. The Defendants in this case have demonstrated that they had policies in place governing persons in their care who were interested in putting their children up for adoption. The undisputed evidence in this case does not support a conclusion that the Defendants were acting in callous disregard of the biological mother's desire to place her child up for adoption; in fact, the undisputed proof indicates that the Defendants, pursuant to their policies, had begun the process of placing the biological mother in touch with social services agencies dedicated to placing children for adoption. The Court cannot conclude that simply because the Plaintiff believed her motives and methodology were superior to those of the Defendants that her termination would result in such an undermining of Tennessee's public policies regarding adoption that a new exception to the general rule of "at-will" employment should be created. . . .

Plaintiff appeals raising several issues. As restated, these issues are: (1) whether the Trial Court erred when it found that Tenn. Code Ann. § 36-1-108(a) did not create an actionable right; (2) whether the Trial Court erred when it found that Plaintiff's termination did not violate an unambiguous statutory provision even after correctly finding that adoption was an important public policy in Tennessee; and (3) whether the Trial Court erred when it found that Plaintiff's termination did not violate a clear public policy of the State of Tennessee.

Discussion

The material facts in this case are the admitted actions of Plaintiff surrounding the adoption of the unwed mother's baby born at Parkwest Medical Center on June 30, 2006. There is no dispute that Plaintiff was terminated for these actions. Because the material facts are not in dispute, this case properly was resolved by summary judgment. The dispute centers around whether it was Plaintiff or Defendants entitled to the grant of summary judgment.

Our Supreme Court discussed the standard of review in summary judgment cases as follows:

> The scope of review of a grant of summary judgment is well established. Because our inquiry involves a question of law, no

> presumption of correctness attaches to the judgment, and our task is to review the record to determine whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997); *Cowden v. Sovran Bank/Cent. S.*, 816 S.W.2d 741, 744 (Tenn. 1991).
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> A summary judgment may be granted only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04; *Byrd v. Hall*, 847 S.W.2d 208, 214 (Tenn. 1993). The party seeking the summary judgment has the ultimate burden of persuasion "that there are no disputed, material facts creating a genuine issue for trial . . . and that he is entitled to judgment as a matter of law." *Id*. at 215. If that motion is properly supported, the burden to establish a genuine issue of material fact shifts to the non-moving party. In order to shift the burden, the movant must either affirmatively negate an essential element of the nonmovant's claim or demonstrate that the nonmoving party cannot establish an essential element of his case. *Id*. at 215 n.5; *Hannan v. Alltel Publ'g Co.*, 270 S.W.3d 1, 8-9 (Tenn. 2008). "[C]onclusory assertion[s]" are not sufficient to shift the burden to the non-moving party. *Byrd*, 847 S.W.2d at 215; *see also Blanchard v. Kellum*, 975 S.W.2d 522, 525 (Tenn. 1998). Our state does not apply the federal standard for summary judgment. The standard established in *McCarley v. West Quality Food Service*, 960 S.W.2d 585, 588 (Tenn. 1998), sets out, in the words of one authority, "a reasonable, predictable summary judgment jurisprudence for our state." Judy M. Cornett, *The Legacy of Byrd v. Hall: Gossiping About Summary Judgment in Tennessee*, 69 Tenn. L. Rev. 175, 220 (2001).
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> Courts must view the evidence and all reasonable inferences therefrom in the light most favorable to the non-moving party. *Robinson v. Omer*, 952 S.W.2d 423, 426 (Tenn. 1997). A grant of summary judgment is appropriate only when the facts and the reasonable inferences from those facts would permit a reasonable person to reach only one conclusion. *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2000). In making that assessment, this Court must discard all countervailing evidence. *Byrd*, 847 S.W.2d at 210-11. Recently, this Court confirmed these principles in *Hannan*.

Giggers v. Memphis Housing Authority, 277 S.W.3d 359, 363-64 (Tenn. 2009).

In *Crews v. Buckman Laboratories Int'l, Inc.*, 78 S.W.3d 852 (Tenn. 2002), the Supreme Court discussed employment at-will and retaliatory discharge claims as follows:

Tennessee has long adhered to the employment-at-will doctrine in employment relationships not established or formalized by a contract for a definite term. *See, e.g., Bennett v. Steiner-Liff Iron & Metal Co.*, 826 S.W.2d 119, 121 (Tenn. 1992). Under this "employment at will" doctrine, both the employer and the employee are generally permitted, with certain exceptions, to terminate the employment relationship "at any time for good cause, bad cause, or no cause." *See Sullivan v. Baptist Mem'l Hosp.*, 995 S.W.2d 569, 574 (Tenn. 1999). This relationship recognizes (1) that employers should be free to make their own business judgments without undue court interference, *see Mason v. Seaton*, 942 S.W.2d 470, 474 (Tenn. 1997), and (2) that employees may "refuse to work for a [person] or company" and "may exercise [their rights] in the same way, to the same extent, for the same cause or want of cause as the employer," *see Payne v. Western & Atl. R.R.*, 81 Tenn. (13 Lea) 507, 518-19 (1884), *overruled on other grounds, Hutton v. Watters*, 132 Tenn. 527, 544, 179 S.W. 134, 138 (1915). Indeed, this Court has noted that an employer's "'ability to make and act upon independent assessments of an employee's abilities and job performance as well as business needs is essential to the free-enterprise system.'" *Mason*, 942 S.W.2d at 474 (quoting *Clifford v. Cactus Drilling Corp.*, 419 Mich. 356, 353 N.W.2d 469, 474 (1984)).

However, an employer's ability to discharge at-will employees was significantly tempered by our recognition in *Clanton v. Cain-Sloan Co.*, 677 S.W.2d 441 (Tenn. 1984), of a cause of action for retaliatory discharge. Since that time, we have further recognized that an at-will employee "generally may not be discharged for attempting to exercise a statutory or constitutional right, or for any other reason which violates a clear public policy which is evidenced by an unambiguous constitutional, statutory, or regulatory provision." *See Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 716-17 (Tenn. 1997). Therefore, in contrast to the purposes typically justifying the employment-at-will doctrine, an action for retaliatory discharge recognizes "that, in limited circumstances, certain well-defined, unambiguous principles of public policy confer upon employees implicit rights which must not be circumscribed or chilled by the potential of termination." *Id.*

* * *

In Tennessee, the elements of a typical common-law retaliatory discharge claim are as follows: (1) that an employment-at-will relationship existed; (2) that the employee was discharged, (3) that the reason for the discharge was that the

> employee attempted to exercise a statutory or constitutional right, or for any other reason which violates a clear public policy evidenced by an unambiguous constitutional, statutory, or regulatory provision; and (4) that a substantial factor in the employer's decision to discharge the employee was the employee's exercise of protected rights or compliance with clear public policy. *See, e.g., Reynolds v. Ozark Motor Lines, Inc.*, 887 S.W.2d 822, 825 (Tenn. 1994); *Anderson v. Standard Register Co.*, 857 S.W.2d 555, 558 (Tenn. 1993); *Chism v. Mid-South Milling Co.*, 762 S.W.2d 552, 556 (Tenn. 1988).

Crews, 78 S.W.3d at 857-58, 862.

Tenn. Code Ann. § 36-1-108(a) is the statutory provision which Plaintiff claims gave her the absolute and unilateral right to inform the birth mother that she knew of potential adoptive parents. Plaintiff claims this statutory right trumps any policy created by Defendants that may be inconsistent. This statute provides as follows:

> (a) No person, corporation, agency, or other entity, except the department or a licensed child-placing agency or licensed clinical social worker, as defined in § 36-1-102, shall engage in the placement of children for adoption; provided, that this section shall not be construed to prohibit any person from advising parents of a child or prospective adoptive parents of the availability of adoption, or from acting as an agent or attorney for the parents of a child or prospective adoptive parents in making necessary arrangements for adoption so long as no remuneration, fees, contributions, or things of value are given to or received from any person or entity for such service other than usual and customary legal and medical fees in connection with the birth of the child or other pregnancy-related expenses, or for counseling for the parents and/or the child, and for the legal proceedings related to the adoption.

Tenn. Code Ann. § 36-1-108(a) (2005).

We agree with the Trial Court's and Defendants' interpretation of the statute. While the statute expresses the General Assembly's intent not to prohibit the type of activity engaged in by Plaintiff, it cannot reasonably be interpreted as conferring on her and, consequently, every citizen of this State, the absolute right to do so. Thus, while the statute expressly does not prohibit Plaintiff's conduct, it creates no guaranteed rights for her. If the General Assembly wanted to make such conduct protected (as opposed to not being illegal), the General Assembly quite easily could have used language to accomplish that objective. If we were to uphold Plaintiff's interpretation of the statute, any individual or entity in this State would have carte blanche authority to interject themselves into the situation whenever a birth mother was considering adoption, even if their behavior violated reasonable and effective policies established by hospitals or other health care

facilities to facilitate adoptions. We conclude that to the extent Tenn. Code Ann. § 36-1-108(a) confers any statutory rights, those rights are conferred on individuals and entities specifically authorized by the adoption statutes to facilitate adoptions. This does not include Plaintiff. Therefore, we agree with the Trial Court's finding that Plaintiff was not terminated for exercising a statutory right.

The next issue is whether Plaintiff's termination was caused by her exercising a right protected by this State's clear public policy as evidenced by an unambiguous constitutional, statutory, or regulatory provision. Plaintiff argues that the public policy of the State of Tennessee is to favor adoptions and her actions were undertaken in furtherance of that public policy. We agree that Tennessee's public policy favors adoptions in situations involving an unwanted child. *See* Tenn. Code Ann. § 36-1-101(a) (2005) ("The primary purpose of this part is to provide means and procedures for the adoption of children and adults that recognize and effectuate to the greatest extent possible the rights and interests of persons affected by adoption, especially those of the adopted persons, which are specifically protected by the constitutions of the United States and the state of Tennessee . . . ."). However, we conclude that Tennessee's clear public policy to facilitate adoptions applies only to those entities expressly recognized and authorized by the statute to conduct adoptions, and not to the public at large. Since Plaintiff is not such an entity, we likewise conclude that she was not terminated in violation of a "clear public policy evidenced by an unambiguous constitutional, statutory, or regulatory provision" of the State of Tennessee. *See Crews*, 78 S.W.3d at 862.

Plaintiff was not terminated for exercising a statutory right, and her termination did not violate a clear public policy evidenced by an unambiguous constitutional, statutory, or regulatory provision of the State of Tennessee. For purposes of the termination of her employment, Plaintiff was an at-will employee who could be terminated "at any time for good cause, bad cause, or no cause." *Crews*, 78 S.W.3d at 857-58. Her termination did not run afoul of this principle. In concluding that the Trial Court correctly granted Defendants' motion for summary judgment on Plaintiff's retaliatory discharge claim, we emphasize that the issue before this Court is whether Plaintiff's termination was illegal, not whether we think her conduct merited termination under the circumstances of this case. *Cf. Spann v. Abraham*, 36 S.W.3d 452, 467 (Tenn. Ct. App. 1999) ("Title VII does not require courts to act as super personnel departments to re-examine an employer's judgment or its management prerogatives and business decisions. . . . Accordingly, the issue in Title VII cases is not whether the employer made a correct decision, but rather whether the employer discriminated against an employee in a protected class.")(citations omitted).

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Chancery Court of Knox County solely for collection of the costs below. Costs on appeal are taxed to the Appellant, Dorothy Morton, and her surety, for which execution may issue, if necessary.

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D. MICHAEL SWINEY, JUDGE